



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

AUG 4 2016

OFFICE OF  
WATER

Mr. Adam Carlesco  
Hall & Associates  
Suite 701  
1620 I Street, NW  
Washington, DC 20006-4033

Re: Freedom of Information Act Request EPA-HQ-2016-006479

Dear Mr. Carlesco:

This letter is in reference to your May 9, 2016 Freedom of Information Act (FOIA) request to the U.S. Environmental Protection Agency (EPA), in which you requested:

- All records that were used as the basis for EPA's final decision to not appeal the 8th Circuit decision in *Iowa League of Cities v. EPA*, 711 F.3d 844 (8th Cir. 2013) (*ILOC*) to the Supreme Court.
- All communication between EPA and the Department of Justice discussing non-acquiesce to the 8th Circuit's decision in *ILOC*.
- Any correspondence and communications with the Department of Justice recommending or concluding that it was permissible for EPA to non-acquiesce to the decision of the 8th Circuit.
- Any EPA document concluding that it was lawful for the Agency to non-acquiesce to the 8th Circuit's decision in *ILOC*.
- Any documents prepared by EPA or communications with the Regional Offices addressing whether or not non-acquiesce to the 8th Circuit's decision in *ILOC* was permissible on future permitting actions.

On June 20, 2016, you clarified that the May 9, 2016 FOIA request was not intended to include EPA records that solely reference non-acquiescence in the context of EPA's earlier FOIA responses (December 24, 2013 response to FOIA request EPA-HQ-2014-000552 and January 22, 2015 response to FOIA request EPA-HQ-FOIA-2015-001494), Hall & Associates' appeal to FOIA request EPA-HQ-FOIA-2014-000552, and subsequent litigation (Hall & Associates v. U.S. EPA, C.A. Action No. 15-1055(KBJ)).

On July 21, 2016 and July 27, 2016 we provided interim, partial responses to your request. These responses included an itemized invoice for \$692.00, which is the cost of responding to the FOIA. If you have not done so already, please forward your check or money order, made payable to U.S. Environmental Protection Agency, within 30 days of the date of this response. Your check should refer to the FOIA number above and should be accompanied by the top portion of the enclosed Bill for Collection. Your prompt payment of the amount indicated will be appreciated.

This letter is a final response to your request. Enclosure A lists additional documents which are responsive to your request in EPA-HQ-2016-006479. In addition, on December 24, 2013 and January 29, 2014, EPA provided you with responses to your FOIA request EPA-HQ-FOIA-2014-000552. Some of the records in that response are responsive to EPA-HQ-2016-006479 and are not specified in Enclosure A. The responses to EPA-HQ-FOIA-2014-000552 are enclosed.

We are unable to provide the following documents which have been determined to be exempt from mandatory disclosure by either the deliberative process privilege of 5 U.S.C. 552(b)(5) as pre-decisional, deliberative, and confidential or the under the attorney/client privilege of 5 U.S.C. 552(b)(5).

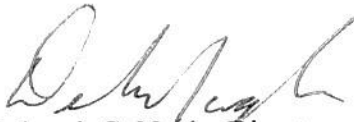
1. Letter from Avi Garbow to Robert Dreher dated September 13, 2013.
2. Draft letter from Avi Garbow to Robert Dreher dated August 13, 2013.
3. Draft letter from Avi Garbow to Robert Dreher dated August 14, 2013.
4. Draft letter from Avi Garbow to Robert Dreher undated.
5. Draft issue paper: Petitioning the Supreme Court, undated.
6. Draft issue paper: Iowa league options.docx, dated August 7, 2013.
7. Draft issue paper: Iowa league decision, undated.

This letter concludes our response to your request. You may appeal this response by email at [hq.foia@epa.gov](mailto:hq.foia@epa.gov), or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue. If you are submitting your appeal by hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals *received* after the 90-calendar-day limit. Appeals received after 5:00 pm EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible

handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek assistance from EPA's FOIA Public Liaison at [hq.foia@epa.gov](mailto:hq.foia@epa.gov) or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; email, [ogis@nara.gov](mailto:ogis@nara.gov); telephone, (301) 837-1996 or (877) 684-6448; or fax, (301) 837-0348.

Please contact Kevin Weiss at (202) 564-0742 if you have any questions regarding our response.

Sincerely,

A handwritten signature in dark ink, appearing to read "Deborah G. Nagle", written in a cursive style.

Deborah G. Nagle, Director  
Water Permits Division

Enclosure A

**Responsive Records for FOIA EPA-HQ-2016-006479**

August 4, 2016

1. Email from Brad Ammons to Loren Denton, dated April 11, 2013. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.
2. Email from Susan Shinkman to Cynthia Giles, dated August 2, 2013. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.
3. Email from Richard Witt to Joseph Theis, dated August 7, 2013.
4. Email from Richard Witt to Kevin Weiss, dated September 26, 2013.
5. Email from Steven Neugeboren to Brenda Mallory, dated October 21, 2013. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.
6. Email from Richard Witt to Mary Ellen, dated October 28, 2013.
7. Email from Andrew Doyle to Richard Witt, dated October 28, 2013. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.
8. Email from Richard Witt to Steven Neugeboren, dated October 29, 2013.
9. Email from Kevin Weiss to Richard Witt, dated October 29, 2013.
10. Attachment: Moving Forward cover v2.docx. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.

11. Email from Richard Witt to Deane Bartlett, dated January 15, 2014. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.
12. Email from Mary Ellen Levine to Richard Witt, dated March 7, 2014. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.
13. Email from Mary Ellen Levine to Steven Neugeboren, dated April 19, 2014. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.
14. Email from Mary Ellen Levine to Richard Witt, dated May 30, 2014. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.
15. Email from Richard Witt to Steve Neugeboren, dated June 2, 2014. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.
16. Email from Avi Garbow to Marna McDermott, dated September 20, 2014. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.
17. DoJ Brief filed in National Environmental Development Association's Clean Air Project v EPA, December 6, 2014.
18. Attachment: Iowa League of Cities v.docx. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.

19. Attachment: Iowa League of Cities v V2.docx. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.
20. Attachment: Next Steps pre briefing for Avi rtw mel 10 29 13.docx. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.
21. Letter from Nancy Stoner to Tom Cochran, dated April 2, 2014.
22. Letter from Tom Cochran to Administrator McCarthy, dated November 26, 2013.
23. Nonacquiescence by Federal Administrative Agencies, Yale Law Journal, February, 1989.